

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re FIRSTENERGY CORP. SECURITIES LITIGATION) No. 2:20-cv-03785-ALM-KAJ
)
) CLASS ACTION
)
This Document Relates To:) Judge Algenon L. Marbley
) Magistrate Judge Kimberly A. Jolson
)
)
ALL ACTIONS.)
)
)

DISCOVERY CONFERENCE STATUS REPORT

MURRAY MURPHY MOUL
+ BASIL LLP
JOSEPH F. MURRAY (0063373)
1114 Dublin Road
Columbus, OH 43215
Telephone: 614/488-0400
614/488-0401 (fax)
murray@mmb.com

Liaison Counsel

ROBBINS GELLER RUDMAN
& DOWD LLP
DARREN J. ROBBINS (*pro hac vice*)
MARK SOLOMON (*pro hac vice*)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
darrenr@rgrdlaw.com
marks@rgrdlaw.com

Lead Counsel for Lead Plaintiff Los Angeles County
Employees Retirement Association and Plaintiffs
Amalgamated Bank, City of Irving Supplemental
Benefit Plan, and Wisconsin Laborers' Pension
Fund

On July 6, 2023, the Court notified the parties that it would hold the presumptively scheduled July 20, 2023 discovery conference, “at which the parties should be prepared to discuss the appointment of a special master.” 7/6/23 Chamber’s email. The parties have met and conferred regarding the appointment of a special master. Certain parties have made proposals regarding the appointment of a special master. One such proposal is from Class Plaintiffs and the Direct Action Plaintiffs (together, the “Plaintiffs”).¹ The other proposal is from defendant FirstEnergy Corp. (“FirstEnergy”).

I. PLAINTIFFS’ PROPOSAL REGARDING APPOINTMENT OF SPECIAL MASTER

If the Court determines that it would be appropriate to appoint a special master in this matter, Plaintiffs propose that: (1) the special master be appointed to decide all new discovery disputes that involve third parties (this Court would decide any pre-existing disputes involving third parties (*see, e.g.*, ECF 496)); (2) objections to decisions of the special master be made to Chief Judge Marbley directly; and (3) this Court continue to decide all discovery disputes between the parties.

II. FIRSTENERGY’S PROPOSAL REGARDING APPOINTMENT OF SPECIAL MASTER

If the Court believes that a special master for discovery would be of assistance to the Court, FirstEnergy would agree to a special master’s appointment in light of the complexity and breadth of discovery in these actions and the associated burdens placed on the Court. Subject to the views of

¹ Class Plaintiffs are Lead Plaintiff Los Angeles County Employees Retirement Association and named plaintiffs Amalgamated Bank, as Trustee for the LongView LargeCap 500 Index Fund, LongView Quantitative LargeCap Fund, LongView Broad Market 3000 Index Fund, LongView LargeCap 500 Index Fund VEBA, LV LargeCap 1000 Value Index Fund, LongView Quantitative MidCap Fund, LongView Quant LargeCap Equity VEBA Fund and LongView Core Plus Fixed Income Fund, City of Irving Supplemental Benefit Plan, and Wisconsin Laborers’ Pension Fund (collectively, the “Class Plaintiffs”). The Direct Action Plaintiffs are plaintiffs from the related actions captioned *MFS Series Trust I v. FirstEnergy Corp.*, No. 2:21-cv-05839 (S.D. Ohio) and *Brighthouse Funds Trust II – MFS Value Portfolio v. FirstEnergy Corp.*, No. 2:22-cv-00865 (S.D. Ohio).

the Court, FirstEnergy proposes that the scope of the special master's appointment should cover all discovery matters and not be limited to non-party discovery. In the interests of judicial efficiency and avoiding unnecessary complexity, FirstEnergy also would not exclude "pre-existing disputes" from the scope of a special master's appointment. FirstEnergy respectfully submits that (i) any objections to orders or recommendations of the special master should be made in accordance with Federal Rule of Civil Procedure 53 to be adjudicated by Magistrate Judge Jolson, or, at the discretion of the Court, by Chief Judge Marbley; and (ii) all decisions made under delegated authority should remain subject to review by the District Court pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72. FirstEnergy further submits that the compensation of a special master should be allocated 50% to the Plaintiffs and 50% to the Defendants.

III. PROCESS FOR SELECTING SPECIAL MASTER

If the Court determines that it would be appropriate to appoint a special master in this matter, the parties agree on the following process for selecting the special master: the parties shall have seven calendar days to either (1) submit to the Court the name of a single proposed special master about whom all parties agree, or (2) submit to the Court the names of two proposed special masters, with Plaintiffs submitting one name and defendants submitting the other name, but the submission should not reveal which side is proposing which. To the extent there are any known unresolved objections on conflicts grounds, the existence of the objections should be disclosed without argument or additional information until further order of the Court.

Dated: July 19, 2023

Respectfully submitted,

s/ Joseph F. Murray
Joseph F. Murray, Trial Attorney (0063373)

s/ Thomas D. Warren (with permission)
Thomas D. Warren, Trial Attorney (0077541)

MURRAY MURPHY MOUL
+ BASIL LLP
1114 Dublin Road
Columbus, OH 43215
Telephone: 614/488-0400
614/488-0401 (fax)
murray@mmb.com

Liaison Counsel

Darren J. Robbins (admitted *pro hac vice*)
Mark Solomon (admitted *pro hac vice*)
ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
darrenr@rgrdlaw.com
marks@rgrdlaw.com

*Attorneys for Lead Plaintiff Los Angeles
County Employees Retirement Association
and Plaintiffs Amalgamated Bank, City of
Irving Supplemental Benefit Plan, and
Wisconsin Laborers' Pension Fund*

WARREN TERZIAN LLP
30799 Pinetree Rd., Suite 345
Pepper Pike, OH 44124
Telephone: 213/410-2620
tom.warren@warrenterzian.com

Robert J. Giuffra, Jr. (admitted *pro hac vice*)
Sharon L. Nelles (admitted *pro hac vice*)
David M.J. Rein (admitted *pro hac vice*)
Hilary M. Williams (admitted *pro hac vice*)
Tasha N. Thompson (admitted *pro hac vice*)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
Telephone: 212/58-4000|
212/558-3588 (fax)
giuffrar@sullcrom.com
nelless@sullcrom.com
reind@sullcrom.com
williamsh@sullcrom.com
thompsonstas@sullcrom.com

Kamil R. Shields (admitted *pro hac vice*)
SULLIVAN & CROMWELL LLP
1700 New York Ave., N.W., Suite 7000
Washington, DC 20006
Telephone: 202/956-7040
202/293-6330 (fax)
shieldska@sullcrom.com

Attorneys for Defendant FirstEnergy Corp.

s/ Carole S. Rendon (with permission)
Carole S. Rendon, Trial Attorney (0070345)
Douglas L. Shively (0094065)
Daniel R. Warren (0054595)
Jeremy Steven Dunnaback (0098129)
BAKER & HOSTETLER LLP
Key Tower, 127 Public Square, Suite 2000
Cleveland, OH 44114
Telephone: 216/621-0200
216/696-0740 (fax)
crendon@bakerlaw.com
dshively@bakerlaw.com
dwarren@bakerlaw.com
jdunnaback@bakerlaw.com

George A. Stamboulidis (admitted *pro hac vice*)
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: 212/589-4211
212/589-4201 (fax)
gstamboulidis@bakerlaw.com

Attorneys for Defendant Charles E. Jones

s/ Douglas M. Mansfield (with permission)
Douglas M. Mansfield (0063443)
LAPE MANSFIELD NAKASIAN
& GIBSON, LLC
9980 Brewster Lane, Suite 150
Powell, OH 43065
Telephone: 614/763-2316
614/467-3704 (fax)
dmansfield@lmng-law.com

Michael L. Kichline (admitted *pro hac vice*)
Laura H. McNally (admitted *pro hac vice*)
Emily S. Kimmelman (admitted *pro hac vice*)
Karen Pieslak Pohlmann (admitted *pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

s/ Geoffrey J. Ritts (with permission)

Geoffrey J. Ritts (0062603)
Robert S. Faxon (0059678)
Corey A. Lee (0099866)
Stephen G. Sozio (0032405)
Adrienne F. Mueller (0076332)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
Telephone: 216/586-3939
216/579-0212 (fax)
gjritts@jonesday.com
rfaxon@jonesday.com
calee@jonesday.com
sgsozio@jonesday.com
afmueller@jonesday.com

Marjorie P. Duffy (0083452)
Jordan M. Baumann (0093844)
M. Ryan Harmanis (0093642)
JONES DAY
325 John H. McConnell Boulevard, Suite 600
Columbus, OH 43215
Telephone: 614/469-3939
614/461-4198 (fax)
mpduffy@jonesday.com
jbaumann@jonesday.com
rharmanis@jonesday.com

Scott B. Scheinberg (admitted *pro hac vice*)
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
Telephone: 412/391-3939
412/394-7959 (fax)
sscheinberg@jonesday.com

Attorneys for Defendants Steven E. Strah, K. Jon Taylor, Jason J. Lisowski, George M. Smart, Paul T. Addison, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Jerry Sue Thornton, and Leslie M. Turner

Telephone: 215/963-5000
215/963-5001 (fax)
michael.kichline@morganlewis.com
laura.mcnally@morganlewis.com
emily.kimmelman@morganlewis.com
karen.pohlmann@morganlewis.com

Attorneys for Defendant Dennis M. Chack

s/ Brian P. O'Connor (with permission)

Brian P. O'Connor (0086646)
SANTEN & HUGHES
600 Vine Street, Suite 2700
Cincinnati, OH 45202
Telephone: 513/721-4450
513/852-5994 (fax)
bpo@santenhughes.com

Preston Burton (admitted *pro hac vice*)
Adam Miller (admitted *pro hac vice*)
Bree Murphy (admitted *pro hac vice*)
Jill Winter (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE
2001 M Street NW, Suite 500
Washington, DC 20036
Telephone: 202/349-8000
202/349-8080 (fax)
pburton@orrick.com
adam.miller@orrick.com
bmurphy@orrick.com
jwinter@orrick.com

Attorneys for Defendant Donald R. Schneider

s/ John F. McCaffrey (with permission)

John F. McCaffrey (0039486)
John A. Favret (0080427)
Hannah M. Smith (0090870)
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113
Telephone: 216/592-5000
216/592-5009 (fax)
john.mccaffrey@tuckerellis.com
john.favret@tuckerellis.com
hannah.smith@tuckerellis.com

Steve Grimes (admitted *pro hac vice*)
Dan K. Webb (admitted *pro hac vice*)
WINSTON & STRAWN, LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone: 312/558-5600
312/558-5700 (fax)
sgrimes@winston.com
dwebb@winston.com

Attorneys for Defendant Michael J. Dowling

s/ James E. Arnold (with permission)

James E. Arnold (0037712)
Gerhardt A. Gosnell II (0064919)
ARNOLD & CLIFFORD LLP
115 W. Main St., Fourth Floor
Columbus, OH 43215
Telephone: 614/460-1600
614/469-1093 (fax)
jarnold@arnlaw.com
ggosnell@arnlaw.com

Veronica E. Callahan (admitted *pro hac vice*)

Aaron F. Miner (admitted *pro hac vice*)

Yiqing Shi (admitted *pro hac vice*)

ARNOLD & PORTER KAYE

SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710

Telephone: 212/836-8000

212/836-8689 (fax)

aaron.miner@arnoldporter.com

veronica.callahan@arnoldporter.com

yiqing.shi@arnoldporter.com

Andrew C. Johnson (admitted *pro hac vice*)

ARNOLD & PORTER KAYE

SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001-3743
Telephone: 202/942-5631
andrew.johnson@arnoldporter.com

Attorneys for Defendant Leila L. Vespoli

s/ Andrew P. Guran (with permission)

Andrew P. Guran (0090649)
VORYS, SATTER, SEYMOUR
& PEASE LLP
50 South Main Street, Suite 1200
Akron, OH 44308-1471
Telephone: 330/208-1000
330/208-1001 (fax)
apguran@vorys.com

s/ Jeremy R. Teaberry (with permission)

Jeremy R. Teaberry (0082870)
Timothy D. Katsiff (admitted *pro hac vice*)
David L. Axelrod (admitted *pro hac vice*)
Emilia McKee Vassallo (admitted *pro hac vice*)
Brittany M. Wilson (admitted *pro hac vice*)
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Telephone: 215/665-8500
215/864-8999 (fax)
teaberryj@ballardspahr.com
katsifft@ballardspahr.com
axelrodd@ballardspahr.com
mckeevassalloe@ballardspahr.com
wilsonbm@ballardspahr.com

Attorneys for Defendant James F. Pearson

s/ John R. Mitchell (with permission)

John R. Mitchell (0066759)
Michael J. Zbiegien Jr. (0078352)
Kelsey Hughes-Blaum (admitted *pro hac vice*)
TAFT STETTINIUS & HOLLISTER LLP
200 Public Square, Suite 3500
Cleveland, OH 44114-2302
Telephone: 216/706-3909
216/241-3707 (fax)
jmitchell@taftlaw.com
mzbiegien@taftlaw.com
khughesblaum@taftlaw.com

Attorneys for Defendant Ty R. Pine

s/ John C. Fairweather (with permission)

John C. Fairweather (0018216)
Lisa S. DelGrosso (0064938)
BROUSE McDOWELL
388 South Main Street, Suite 500
Akron, OH 44311
Telephone: 330/535-5711
330/253-8601 (fax)
jfairweather@brouse.com
ldelgross@brouse.com

Victor A. Walton, Jr. (0055241)
Joseph M. Brunner (0085485)
VORYS, SATTER, SEYMOUR
& PEASE LLP
301 East Fourth Street, Suite 3500
Great American Tower
Cincinnati, OH 45202
Telephone: 513/723-4000
513/723-4056 (fax)
vawalton@vorys.com
jmbrunner@vorys.com

Attorneys for Defendant John Judge

Stephen S. Scholes (admitted *pro hac vice*)
Paul M.G. Helms (admitted *pro hac vice*)
Samantha L. Fenton (admitted *pro hac vice*)
MCDERMOTT WILL & EMERY LLP
444 West Lake Street
Chicago, IL 60606-0029
Telephone: 312/372-2000
312/984-7700 (fax)
sscholes@mwe.com
phelms@mwe.com
sfenton@mwe.com

Attorneys for Defendant Robert P. Reffner

s/ Robert W. Trafford (with permission)
Robert W. Trafford, Trial Attorney (0040270)
David S. Bloomfield, Jr. (0068158)
PORTER, WRIGHT, MORRIS
& ARTHUR LLP
41 South High Street, Suite 2900
Columbus, OH 43215-6194
Telephone: 614/227-2000
614/227-2100 (fax)
rtrafford@porterwright.com
dbloomfield@porterwright.com

Brian S. Weinstein (admitted *pro hac vice*)
Eric M. Kim (admitted *pro hac vice*)
Joshua N. Shinbrot (admitted *pro hac vice*)
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
Telephone: 202/450-4000
brian.weinstein@davispolk.com
eric.kim@davispolk.com
joshua.shinbrot@davispolk.com

*Attorneys for the Underwriter Defendants
Barclays Capital Inc., BofA Securities, Inc.,
Citigroup Global Markets Inc., J.P. Morgan
Securities LLC, Morgan Stanley & Co. LLC,
Mizuho Securities USA LLC, PNC Capital
Markets LLC, RBC Capital Markets, LLC,
Santander Investment Securities Inc., Scotia
Capital (USA) Inc., SMBC Nikko Securities
America, Inc., CIBC World Markets Corp.,
KeyBanc Capital Markets Inc., TD Securities
(USA) LLC, U.S. Bancorp Investments, Inc.,
and MUFG Securities Americas Inc.*

ICE MILLER LLP
MATTHEW L. FORNSHELL, Trial Attorney
(0062101)
NICOLE R. WOODS (0084865)

s/ Matthew L. Fornshell (with permission)
MATTHEW L. FORNSHELL

250 West Street, Suite 700
Columbus, OH 43215-7509
Telephone: 614/ 462-1061
614/ 222-3692 (fax)
matthew.fornshell@icemiller.com
nicole.woods@icemiller.com

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
STEVEN E. FINEMAN (*pro hac vice*)
DANIEL P. CHIPLOCK (*pro hac vice*)
MICHAEL J. MIARMI (*pro hac vice*)
JOHN T. NICOLAOU (*pro hac vice*)
GABRIEL A. PANEK (*pro hac vice*)
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Telephone: 212/355-9500
(212) 355-9592 (fax)
sfineman@lchb.com
dchiplock@lchb.com
mmiarmi@lchb.com
jnicolaou@lchb.com
gpanek@lchb.com

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
RICHARD M. HEIMANN (*pro hac vice*)
BRUCE W. LEPPA (*pro hac vice*)
MICHAEL K. SHEEN (*pro hac vice*)
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415/956-1000
415/956-1008 (fax)
rheimann@lchb.com
bleppa@lchb.com
msheen@lchb.com

Attorneys for Direct Action Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically on July 19, 2023. Notice of this filing will be sent to all electronically registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Joseph F. Murray
JOSEPH F. MURRAY (0063373)